

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD RAY BURNSIDE,

Defendant.

Case No. CR01-5601RJB

ORDER

This matter comes before the court on remand from the Ninth Circuit, (Dkt. 282) and on this court's Procedural Orders (Dkts. 283 & 287). Under the remand and said orders, the court must determine whether the sentence imposed would have been materially different had the District Court known that the sentencing guidelines were only advisory pursuant to United States v. Ameline, 409 F.3d 1073 (9<sup>th</sup> Cir. 2005). The court has reviewed the entire file in this case, including the presentence report and the transcript of felony sentencing under Docket Numbers CR98-5565RJB and CR01-5601RJB. The court has reviewed and paid special attention to the filings of the defendant, including attachments.<sup>1</sup> For the reasons stated below, the court now finds that the sentence imposed would not have been materially different had the District Court known that the sentencing guidelines are only advisory.

<sup>1</sup>Page 4 of Docket No. 288, Exhibit 1, is missing from the file.

1 At the time of sentencing on 1 October 2004, the court was very aware of defendant's mental  
2 and emotional health issues, the defendant's drug use, and the defendant's unfortunate childhood.  
3 Additional documents now filed by the defendant do not add any material facts to the information  
4 available at sentencing.

5 Defendant was convicted of Counts 1, 3, and 5, of Assault on a Federal Officer. It was only  
6 the accident of bad marksmanship that prevented the defendant from being guilty of multiple murder  
7 charges.

8 The court believed, at the time of sentencing, that the defendant was a danger to the public  
9 and nothing has been filed to alter that view. The most important consideration in this sentencing  
10 under 18 U.S.C. § 3553, was the need for the sentence imposed "to protect the public from further  
11 crimes of the defendant."

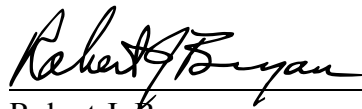
12 Lastly, the court incorporates herein, by this reference, the court's statement in imposing  
13 sentence, found in the transcript on pages 40-43.

14 For the foregoing reason, the court now finds that the sentence imposed in this case would  
15 not have been materially different had the District Court known that the sentencing guidelines were  
16 only advisory, and the court concludes that the defendant should not be resentenced.

17 **IT IS SO ORDERED.**

18 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of  
19 record and to any party appearing *pro se* at said party's last known address.

20 DATED this 22<sup>nd</sup> day of December, 2005.

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22   
23 Robert J. Bryan  
24 United States District Judge  
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